

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEMARKO LASHAWN HALL,

Plaintiff(s),

v.

SUNRISE HOSPITAL & MEDICAL
 CENTER,

Defendant(s).

Case No. 2:23-cv-00459-JAD-NJK

REPORT AND RECOMMENDATION

Pending before the Court is an order for Plaintiff to show cause why this case should not be dismissed for lack of subject matter jurisdiction. Docket No. 5. Plaintiff filed a response. Docket No. 6.

The Court has a duty to ensure that it has subject matter jurisdiction over the dispute before it, an issue it may raise at any time during the proceedings. *See, e.g.*, Fed. R. Civ. P. 12(h)(3). Federal courts are courts of limited jurisdiction and possess only that power authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). “A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). “The party asserting federal jurisdiction bears the burden of proving that the case is properly in federal court.” *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (*citing McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

Plaintiff brought suit alleging state law claims for medical malpractice. *See* Docket No. 1-1 at 4-5. Plaintiff invokes federal question jurisdiction under 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983. Such an assertion is proper when the defendants acted under the color of state law (*i.e.*, when the defendants are “state actors”) to deprive a person of a right secured by federal law. *See West v. Atkins*, 487 U.S. 42, 48-50 (1988); *Williams v. Cal.*, 764 F.3d 1002, 1009 (9th Cir. 2014);

1 *see also Williams v. Harmer*, 2017 WL 1159725, at *3 (D. Nev. Mar. 26, 2017) (citing
2 *Oppenheimer v. Stillwell*, 132 F. Supp. 761, 763 (S.D. Cal. 1955)). Plaintiff has not alleged that
3 Sunrise Hospital or its staff persons are state actors, or that they are otherwise liable under federal
4 law as private parties, and other courts have determined that subject matter jurisdiction is lacking
5 in similar circumstances. *See, e.g., Juliano v. Clark Cnty. Detention Ctr.*, 2013 WL 1249618, at
6 *3 (D. Nev. Mar. 25, 2013); *Baumeister v. Zimmerman*, 2006 WL 8441890, at *1-2 (D. Nev. Apr.
7 18, 2006).

8 Although Plaintiff's response identifies constitutional provisions he contends are
9 implicated by his suit, *see* Docket No. 6, that response fails to provide any basis from which to
10 conclude that Sunrise Hospital or its staff persons are state actors.

11 Accordingly, the undersigned **RECOMMENDS** that this case be dismissed for lack of
12 subject matter jurisdiction.

13 Dated: May 8, 2023

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16 Nancy J. Koppe
17 United States Magistrate Judge

18 **NOTICE**

19 This report and recommendation is submitted to the United States District Judge assigned
20 to this case pursuant to 28 U.S.C. § 636(b)(1). A party who objects to this report and
21 recommendation must file a written objection supported by points and authorities within fourteen
22 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file
23 a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951
24 F.2d 1153, 1157 (9th Cir. 1991).